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Attorney for Michael Erich Hofmann

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA - MODESTO DIVISION

In re

MICHAEL ERICH HOFMANN,

Debtor(s),

Case No 23-90111

Chapter 11 – SUB V

DC No BSH-2

Hearing Date: N/A

Hearing Time: N/A

Department: E; Courtroom: N/A

Judge: Hon. Ronald Sargis

NOTICE OF REMOVAL

1. Michael Erich Hofmann, is the defendant in the civil action brought on June 30, 2016, in the Superior Court of California – County of Stanislaus, Case No. 2200623. Pursuant to provisions of Section 1452 of Title 28 of the United States Code, Michael Erich Hofmann removes this action to the United States District Court for the Eastern District of California which is the judicial district in which the action is pending.

2. The proceeding is arguably core because, although it originally was based in probate, it involved claims determination, the validity, extent, and/or priority of liens, and the sale of estate property. The grounds for removal of this action are that the claims concern the ownership interest in and disposition of estate property for which the Bankruptcy Court would have jurisdiction under 28

1 U.S.C. § 1334 as a case arising under or related to bankruptcy cases (28 U.S.C. § 1442(a)). Further,
2 the grounds for removal are that the state court proceeding has been resolved by final judgment and
3 now currently, the proceeding seeks to sell estate property or otherwise liquidate assets of the estate.

4 3. Sharon and Gary Hofmann, petitioners in the state court action and creditors in this
5 matter, seek to enforce the final state court judgment by selling estate property while other creditors,
6 one secured, one claiming to be secured, seek to be paid from the proceeds of the sale of estate
7 property.

8 4. The claim of the creditor claiming to be secured, Debtor's former spouse, is based on
9 an abstract of judgment for support that is incongruous with an earlier, separate, notarized agreement
10 she entered into with Debtor regarding said claim.

11 5. If the matter is remanded back to state court, some creditors will be paid outside the
12 framework of the Bankruptcy Code, thus allowing certain creditors, some with dubious claims, to
13 obtain payment from estate assets to the detriment of other creditors. Removal of this action is,
14 therefore, proper under Section 1442 of Title 28 of the United States Code because a claim in this
15 civil action arises under the Bankruptcy Code.

16 6. State court cross-complainants, John P. Brichetto, Jacqueline J. Brichetto, individually,
17 and as trustees to the John & Jacqueline Brichetto 2008 Revocable Trust, John P. Brichetto, John M.
18 Brichetto, and Lee Ana L. Brichetto are secured creditors via an abstract of judgment and have filed a
19 proof of claim.

20 7. This Notice of Removal is timely under Section 1452 of Title 28 of the United States
21 Code because it has been at least 30 days since the trustee has been qualified and less than 180 days
22 since the order of relief has been entered. This Notice of Removal is filed within 180 days of the entry
23 for the order of relief.

24 8. All state court papers served on the defendant at the time of removal, consisting of the
25 pleadings, cross-complaint, answer, and moving papers, are attached.

26 I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and
27 correct.

28 HADDIX LAW FIRM

May 14, 2023

/s/ Brian S. Haddix
Brian S. Haddix, Attorney for Michael Erich
Hofmann

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Hearing Time: N/A

Department: E; Courtroom: N/A

Judge: Hon. Ronald Sargis

PROCESS AND PLEADINGS IN THE ACTION

EXHIBIT BINDER 1

1. 06/30/16 PETITION For ORDER Determining Interests by Gary & Sharon, and
Citation -Probate
2. 10/21/16 SUPPLEMENT to PETITION For Order by Sharon
3. 10/25/16 ANSWER of Michael Hofmann
4. 10/25/16 CROSS-COMPLAINT of Michael Hofmann; Notice of Hearing
5. 10/26/16 PROOF OF SERVICE of Answer and Cross-Complaint 12/12/16
NOTICE OF DEMURRER of Sharon Hofmann to Michael Hofmann's Cross-complaint

EXHIBIT BINDER 2

6. 12/12/16 NOTICE OF DEMURRER of Sharon Hofmann to Michael Hofmann's Cross-complaint
7. 12/12/16 Notice of HEARING on Sharon's DEMURRER to Michael Hofmann's Cross-complaint
8. 12/12/16 MEMORANDUM of Points and Authorities in Support of Sharon's Demurrer to Michael Hofmann's Cross-Complaint
9. 12/12/16 DECLARATION of Tyson E. Hubbard (Downey Brand) in Support of Sharon's Demurrer to Michael Hofmann's Cross-complaint
10. 12/12/16 Brichetto DEMURRER to Michael Hofmann's Cross-Complaint
11. 12/12/16 MEMORANDUM of Points and Authorities in Support of Brichetto Demurrer to Michael Hofmann's Cross-Complaint
12. 12/12/16 REQUEST FOR JUDICIAL NOTICE in Support of Brichetto Demurrer to Michael Hofmann's Cross-complaint
13. 12/16/16 NOTICE OF DEMURRER of Gary Hofmann to Michael Hofmann's Cross-Complaint
14. 12/16/16 Gary's DEMURRER to Michael Hofmann's Cross-Complaint
15. 12/16/16 MEMORANDUM of Points and Authorities in Support of Gary's Demurrer to Michael Hofmann's Cross-Complaint

EXHIBIT BINDER 3

16. 12/16/16 DECLARATION of Carl E. Combs in Support of Gary's Demurrer to Michael Hoffman's Cross-Complaint
17. 12/16/16 REQUEST FOR JUDICIAL NOTICE in Support of Gary's Demurrer to Michael Hofola1m's Cross-Complaint; POS
18. 12/21/16 OBJECTION to Petition for Order by Brichetto
19. 12/22/16 CROSS-COMPLAINT by Brichettos; Notice of Hearing
20. 01/11/17 OPPOSITION of Michael to Demurrers to Cross-complaint; POS
21. 01/18/17 REPLY of Sharon in support of Demurrer to Cross-Complaint

1 22. 01/18/17 REPLY of Gary in support of Demurrer to Cross-Complaint;
2 DECLARATION of Carl E. Combs in support of Gary's Reply in support of Demurrer to Cross-
3 complaint

4 23. 01/18/17 REPLY of Brichettos in support of Demurrer to Cross-Complaint

5 24. 01/22/17 ORDER on Demurrers to Michael Hofmann's Cross-Complaint;
6 Notice of Entry of Order (01/28/17)

7 25. 01/25/17 ANSWER of Michael to Brichetto Cross-Complaint

8 **EXHIBIT BINDER 4**

9 26. 01 /26/17 ANSWER of Sharon to Brichetto Cross-Complaint

10 27. 02/28/17 FIRST AMENDED CROSS-COMPLAINT by Michael

11 28. 03/30/17 NOTICE OF HEARING on Brichetto Demurrer to Michael
12 Hofmann's First Amended Cross-Complaint

13 29. 03/30/17 DEMURRER of Brichettos to Michael Hofmann's First Amended
14 Cross- Complaint

15 30. 03/30/17 MEMORANDUM OF POINTS AND AUTHORITIES in Support of
16 Brichetto Demurrer to Michael Hofmann's First Amended Cross- Complaint

17 31. 03/30/17 DECLARATION of Brandy L. Barnes (Rodarakis & Sousa) in Support
18 of Brichetto Demurrer to Michael Hofmann's First Amended Cross- Complaint

19 32. 03/30/17 REQUEST FOR JUDICIAL NOTICE in Support of Brichetto
20 Demurrer to Michael Hofmann's First Amended Cross-Complaint

21 33. 03/30/17 PROOF OF SERVICE of Brichetto demurrer papers

22 34. 04/03/17 NOTICE OF DEMURRER of Sharon to Michael's First Amended
23 Cross- Complaint

24 35. 04/03/17 DEMURRER of Sharon to Michael's First Amended Cross-Complaint
25 of Michael Hofmann

26 36. 04/03/17 MEMORANDUM OF POINTS AND AUTHORITIES in Support of
27 Sharon's Demurrer to Michael's First Amended Cross-Complaint

28 37. 04/03/17 DECLARATION of Tyson E. Hubbard (Downey Brand) in Support of

1 Sharon's Demurrer to First Amended Cross-Complaint

2 38. 04/03/17 REQUEST FOR JUDICIAL NOTICE in Support of Sharon's
3 Demurrer to Michael's First Amended Cross-Complaint

4 39. 04/03/17 PROOF OF SERVICE of Sharon's demurrer papers

5 40. 04/03/17 NOTICE OF JOINDER AND JOINDER of Gary in Sharon's
6 Demurrer to Michael's First Amended Cross-Complaint

7 41. 04/20/17 OPPOSITION to Demurrers by Michael Hofmann to His First
8 Amended Cross-Complaint

9 42. 05/08/17 AMENDED PETITION by Sharon & Gary

10 43. XX/06/17 RESPONSE AND OBJECTION by Sharon and Gary to Michael
11 Hofmann's First Amended Cross-Complaint

12 44. 05/16/17 ORDER ON DEMURRERS to Michael Hofmann's First Amended
13 Cross- Complaint

14 **EXHIBIT BINDER 5**

15 45. 05/18/17 NOTICE OF ENTRY OF ORDER on Demurrers to Michael
16 Hofmann's First Amended Cross-Complaint

17 46. 05/25/17 Verified ANSWER of Brichettos to Michael Hofmann's First
18 Amended Cross-Complaint

19 47. 05/31/17 Verified ANSWER of Gary Hofmann to Michael Hofmann's First
20 Amended Cross-Complaint

21 48. 06/15/17 AMENDED RESPONSE AND OBJECTION of Gary Hofmann to
22 Michael Hofmann's First Amended Cross-Complaint

23 49. 06/23/17—6/27/17 Motion by Michael to STRIKE AMENDED PETITION and
24 supporting Papers

25 50. 08/10/17 OPPOSITION to Motion to STRIKE AMENDED PETITION by
26 Gary and Sharon; Hubbard Decl.

27 **EXHIBIT BINDER 6**

28 51. 08/16/17 REPLY by Michael iso Motion to STRIKE AMENDED PETITION

1 52. 10/10/17 FIRST AMENDED PETITION by Sharon & Gary
2 53. 12/04/17 ANSWER of Michael to Sharon and Gary's First Amended Petition
3 54. 12/04/17 CROSS-COMPLAINT of Michael in response to Sharon and Gary's
4 First Amended Petition; SUMMONS
5 55. 01/16/18 Michael's Ex Parte Application to CONTINUE TRIAL
6 **EXHIBIT BINDER 7**
7 56. 01/16/18 Brichetto Opposition to Michael's Ex Parte Application to
8 CONTINUE TRIAL
9 57. 01/16/18 Sharon's Opposition to Michael's Ex Parte Application to
10 CONTINUE TRIAL
11 58. 02/02/18 Notice of Entry of Order on Demurrers
12 59. 02/06/18 Brichetto ANSWER to Michael's Cross-Complaint
13 60. 02/06/18 Brichetto Objection to Michael's First Amended Petition
14 61. 02/06/18 Gary and Sharon's Answer, Response, and Objection to Michael's
15 Cross- Complaint
16 62. 02/07/18 Michael's Ex Parte Application to CONTINUE TRIAL
17 63. 02/07/18 Sharon's Opposition to Ex Parte Application to CONTINUE TRIAL
18 64. 02/08/18 Brichetto Opposition to Ex Parte Application to CONTINUE TRIAL
19 65. 02/16/18 Substitution of Attorney (Combs for Downey Brand)
20 66. 03/07/18 Michael's Motion for RECONSIDERATION of Denial of Leave to
21 File Amended Cross-Complaint, or, Alternatively, Renewed Motion for Leave to File Amended
22 Cross-Complaint; supporting papers
23 67. 03/17/18 Brichetto, Gary and Sharon's oppositions to Motion for
24 RECONSIDERATION
25 68. 03/23/18 Michael's Reply in Support of Motion for RECONSIDERATION
26 69. 04/17/18 Notice of Entry of Order Denying Motion for RECONSIDERATION
27 **EXHIBIT BINDER 8**
28 70. 04/19/18 Order of Disclosure re Judge Freeland's previous dealings with

1 Frederick Smith and Robert Crabtree

2 71. Notice of Entry of Order of 2nd Amended Interlocutory Judgment

3 72. Notice of OSC to Michael RE Orders Requested by Gary & Sharon in the CMC

4 Statements

5 73. Michael's Response to Sharon & Gary's Notice of OSC for orders in the CMC

6 Statements

7 74. Notice of Entry of Order Granting OSC to Michael RE Orders Requested by Sharon &
8 Gary in the CMC Statements

9 75. Notice of Entry of Order RE Residence (2022-12-01)

10 76. Notice of Entry of Amended Order Granting Ex Parte App for Court Approval for Sale
11 of Residence

12 77. Sharon & Gary's Ex Parte Application for Order Authorizing Writ of Possession

13 **EXHIBIT BINDER 9**

14 78. 01/08/18 Brichetto DEMURRER to Michael's Cross-Complaint; supporting
15 papers

16 RJN ISO Brichetto DEMURRER to Michael's Cross-Complaint

17 Gary and Sharon's Joinder in DEMURRER to Michael's Cross-
18 Complaint; supporting papers

19 Brichetto MOTION TO STRIKE Michael's Cross-Complaint;
20 supporting papers

21 Gary and Sharon's Joinder in MOTION TO STRIKE Michael's Cross-
22 Complaint

23 79. 01/24/18 Michael's Opposition to DEMURRER to Michael's Cross-Complaint;
24 Battista Decl.

25 Michael's Opposition to MOTION TO STRIKE Michael's Cross-
26 Complaint

27 Brichetto REPLY iso DEMURRER

28 Brichetto REPLY iso MOTION TO STRIKE

80. XX/02/23 Gary & Sharon's Ex Parte App for Order Approving Offer by Third
Party Hudson

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Attorney for: Michael Erich Hofmann

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re: Michael Erich Hofmann Debtor(s)	<u>Bankruptcy Case No.:</u> 23-90111 <u>Docket Control Number:</u> BSH-2 <u>Hearing Information</u> (if applicable): Hearing Date: N/A Hearing Time: N/A Location: Courtroom N/A, Dept E Judge: Hon. Ronald Sargis
v. Plaintiff(s) Defendant(s)	<u>Adversary Proceeding No.</u> (if applicable): <u>Docket Control Number:</u> <u>Hearing Information</u> (if applicable): Hearing Date: Hearing Time: Location: Judge:

CERTIFICATE OF SERVICE OF DEBTOR'S CHAPTER 11 – Notice of Removal

I, the undersigned, certify and declare:

1. **Personal knowledge.** I am over the age of 18 years and not a party to the above-entitled case.
2. **Status.** I am ☒ an attorney of record in this case/adversary proceeding, **or** ☐ trustee, **or** ☐ my business/employer is Haddix Law Firm and my business address **or** mailing address if not a business is: 1224 I Street, Modesto, CA, 95354.
3. **About the Case/Proceeding.** (Check at least one type of case/proceeding and as many subheadings thereunder as applicable.)

<input type="checkbox"/> Chapter 7 case (indicate below if subject to limited noticing; check all that are applicable.) <input type="checkbox"/> Rule 2002(h) Limited Noticing. Fed. R. Bankr. P. 2002(h); LBR 2002-3. (Check all that are applicable.) <input type="checkbox"/> One of the following applies: (1) This is a voluntary asset case and at least 70 days have elapsed since the order for relief; (2) This is an involuntary asset case and at least 90 days have elapsed since the order for relief; (3) This is a no asset case and at least 90 days have elapsed since the mailing of the notice of time for filing claims under Fed. R. Bankr. P. 3002(c)(5). <input type="checkbox"/> This case is subject to an order limiting service. Fed. R. Bankr. P. Rule 2002(m). The order limiting service is docketed at ECF no. _____. <input type="checkbox"/> Chapter 9 case (indicate below if subject to limited noticing) <input type="checkbox"/> This case is subject to an order limiting service. Fed. R. Bankr. P. 2002(m). The order limiting service is docketed at ECF no. _____. <input type="checkbox"/> Chapter 15 case	<input type="checkbox"/> Chapter 12 or 13 case (indicate below if subject to limited noticing; check all that are applicable.) <input type="checkbox"/> Rule 2002(h) Limited Noticing. This case is subject to limited noticing because at least 70 days have elapsed since the order for relief. Fed. R. Bankr. P. 2002(h); LBR 2002-3.7. <input type="checkbox"/> Rule 3015(h) Limited Noticing (post-confirmation plan modification only). This case is subject to limited noticing because the debtor(s) has confirmed at least one plan and the modified plan filed herewith neither lengthens the term of, nor diminishes the dividend due general unsecured creditors, from the most recently confirmed plan. Fed. R. Bankr. P. 3015(h); LBR 3015-1(d)(3). <input type="checkbox"/> This case is subject to an order limiting service. Fed. R. Bankr. P. 2002(m). The order limiting service is docketed at ECF no. _____. <input checked="" type="checkbox"/> Chapter 11 case (indicate below if subject to limited noticing) <input type="checkbox"/> This case is subject to limited noticing because one or more creditors/equity holders committees have been appointed. Fed. R. Bankr. P. 2002(i); LBR 2002-4. <input type="checkbox"/> This case is subject to an order limiting service. Fed. R. Bankr. P. 2002(m). The order limiting service is docketed at ECF no. _____. <input type="checkbox"/> Adversary Proceeding
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4. **About the Documents Served**

On May 14, 2023, by the method(s) specified below, the following documents were served (list in space provided):

1. Notice of Removal
2. Process & Pleadings in the Actions – Binders 1-9

or ☐ those documents described in the list appended hereto and numbered **Attachment 4**.

5. **Who is Being Served**

Unless otherwise indicated below, all indicated parties below have received all documents described in Section 4.

<input type="checkbox"/> Debtor(s) <input type="checkbox"/> Debtor's attorney(s) <input checked="" type="checkbox"/> Trustee <input checked="" type="checkbox"/> U.S. Trustee <input type="checkbox"/> Attorneys of record who have appeared in the Bankruptcy Case, the Adversary Proceeding, or contested matter. <input type="checkbox"/> Plaintiff(s) <input type="checkbox"/> Defendant(s) <input type="checkbox"/> All committee members <input type="checkbox"/> Attorney for committee members <input type="checkbox"/> Equity security holders <input type="checkbox"/> Persons who have filed a Request for Notice	<input type="checkbox"/> All creditors and parties in interest (Notice of Hearing only) <input type="checkbox"/> Creditors that have filed claims (Notice of Hearing only) <input checked="" type="checkbox"/> All creditors and parties in interest <input type="checkbox"/> Fewer than all creditors (<i>check at least one below</i>) <input type="checkbox"/> Creditors that have filed claims <input type="checkbox"/> Creditors holding allowed secured claims <input type="checkbox"/> Creditors holding allowed priority unsecured claims <input type="checkbox"/> Creditors holding leases or executory contracts that have been assumed <input type="checkbox"/> 20 largest creditors <input type="checkbox"/> Administrative claimants <input type="checkbox"/> Other party(ies) in interest
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6. How Service is Accomplished**A. ☐ Rule 7004 Service.** *(Check at least one, if applicable)***1. ☐ First Class Mail**

Service was effected on those persons listed on the attachment by placing a true and correct copy of the document(s) served in a sealed envelope, first class mail, postage prepaid in the United States Postal Service (or in a place designated by the law firm or trustee for outgoing mail prior to the last regular pick up of outgoing mailing for the day) for each of the persons listed below. Fed. R. Bankr. P. 7004(b); 7004(g). A list of the persons served, including their name/capacity to receive service, and address is appended hereto and numbered **Attachment 6A1**.

2. ☐ Certified Mail

Service was effected on those persons listed on the attachment by placing a true and correct copy of the document(s) served in a sealed envelope, certified mail, postage prepaid in the United States Postal Service (or in a place designated by the law firm or trustee for outgoing mail prior to the last regular pick up of outgoing mailing for the day) for each of the persons indicated below. Fed. R. Bankr. P. 7004(h). A list of the persons served, including their name/capacity to receive service, and address is appended hereto and numbered **Attachment 6A2**.

3. ☐ Publication

Service was effected by publication as ordered by the court and docketed at ECF no. _____. Fed. R. Bankr. P. 7004(c). Attestation(s) as to the manner and form of such publication is appended hereto and numbered **Attachment 6A3**.

B. ☒ Rule 5 and Rules 7005, 9036 (when Rule 7004 service is not required) Service *(Check at least one, if applicable.)***1. ☒ Electronic Service on Registered Users of the Court's Electronic Filing System.**

Service on those parties in interest, listed below, will be effected by filing those documents, listed above, with the Clerk of the Court. Fed. R. Bankr. P. 9036, 7005; Fed. R. Civ. P. 5(b). Electronic service on registered users of the electronic filing system is not permitted for pleadings or papers that must be served in accordance with Fed. R. Bankr. P. 7004. A copy of the Clerk's Electronic Service Matrix applicable to this case and/or adversary proceeding is appended hereto and numbered **Attachment 6B1**.

2. ☐ U.S. Mail

Service on those parties, listed below, was effected by placing a true and correct copy of the document(s) served in a sealed envelope, first class mail, postage prepaid in the United States Postal Service (or in a place designated by the law firm or trustee for outgoing mail prior to the last regular pick up of outgoing mailing for the day) for each of the persons indicated below. Fed. R. Civ. P. 5(b)(2)(c); Fed. R. Bankr. P. 9014.

1. ☐ Parties in Interest

☐ **Clerk's Matrix of Creditors.** A copy of the matrix of creditors maintained by the Clerk of the Court as applicable to this case and/or adversary proceeding is appended hereto and numbered **Attachment 6B2**. Such list shall be downloaded not more than seven days prior to the date of filing of the pleadings and other documents and shall reflect the date of downloading. WARNING: If "raw data format" of the Clerk's Matrix of Creditors is Attachment 6B2, the signer of the Certificate of Service hereby swear that no changes to the matrix have been made except (1) formatting; and/or (2) "X" ing out of person not served. Such list shall be downloaded not more than seven days prior to the date of filing of the pleadings and other documents and shall reflect the date of downloading.

☐ **List Other Than the Clerk's Matrix of Creditors.** Where service by U.S. Mail is effected on six or fewer parties in interest, parties may (but need not) use a service list. A copy of the custom service list is appended hereto and numbered **Attachment 6B2**.

☒ **Request for Special Notice List.** A copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice is appended hereto and numbered **Attachment 6B3**.

2. ☐ Other Parties in Interest Checked in Section 5. A list of the named and addresses of other parties in interest served (if checked in section 5 above) is appended hereto and numbered **Attachment 6B4**.**3. ☐ Other Methods of Service**

Specify the means of delivery. Fed. R. Civ. P. 5 (b)(2) (A)-(F). A list of those persons so served and the addresses at which they are served is appended hereto and numbered **Attachment 6B5**.

7. Who Accomplished Service

A. Attorney/Trustee *(Check as many as apply)*

Rule 7004 Service

- ☐ § 6A(1): First Class Mail
☐ § 6A(2): Certified Mail
☐ § 6A(3): Publication

Rule 5 Service

- ☒ § 6A(1): Elec. Service on Registered e-Filers
☐ § 6A(2)(a): U.S. Mail
☒ § 6A(2)(b): Request for Special Notice
☐ § 6A(2)(c): Other Parties in Interest § 5
☐ § 6A(3): Other Methods of Service

B. Third Party Service Provider *(Check as many as apply)*

Rule 7004 Service

- ☐ § 6A(1): First Class Mail
☐ § 6A(2): Certified Mail
☐ § 6A(3): Publication

Rule 5 Service

- ☐ § 6A(1): Elec. Service on Registered e-Filers
☐ § 6A(2)(a): U.S. Mail
☐ § 6A(2)(b): Request for Special Notice
☐ § 6A(2)(c): Other Parties in Interest § 5
☐ § 6A(3): Other Methods of Service

Attorney/Trustee *(includes regularly employed staff members):*

I swear under penalty of perjury that: (1) the representations in Sections 1-5 hereof are true and correct; and (2) I served those parties in interest marked in Section 7A in the manner set forth in the referenced portion of Section 6.

Executed on May 14, 2023 at Modesto, CA

Brian S. Haddix
 Printed Name

/s/ Brian S. Haddix
 Signature

Third Party Service Provider *(if applicable):*

I am over the age of 18 years and not a party to the above-entitled case. I swear under penalty of perjury that I served those parties in interest marked in Section 7B in the manner set forth in the referenced portion of Section 6.

Executed on _____, at Modesto, CA

 Printed Name

 Signature

 Name

 Company Name

 Address

 City State Zip Code